

**STATE OF SOUTH CAROLINA**  
**BEFORE THE PUBLIC SERVICE COMMISSION**

**Docket No. 2021-89-E**  
**Docket No. 2021-90-E**

In the Matter of:

Duke Energy Carolinas, LLC's 2021 Avoided Cost  
Proceeding Pursuant to S.C. Code Ann. Section  
58-41-20(A)

**PETITION TO INTERVENE OF  
PELZER HYDRO COMPANY, LLC,  
AQUENERGY SYSTEMS, LLC, AND  
NORTHBROOK CAROLINA  
HYDRO, LLC**

Pelzer Hydro Company, LLC ("Pelzer"), Aquenergy Systems, LLC ("Aquenergy") and Northbrook Carolina Hydro, LLC ("Northbrook") (collectively, the "Hydropower Petitioners"), pursuant to SC Code of Laws § 58-41-20(A) and SC Code of Regs. 103-825, respectfully submit this timely petition to intervene in the above-captioned proceeding currently pending before the South Carolina Public Service Commission (the "Commission"). In support of its petition, the Hydropower Petitioners state as follows:

1. The Hydropower Petitioners, owners and operators of multiple South Carolina hydroelectric facilities, seek to intervene to present information to the Commission that is nothing short of critical to the survival of these facilities—adequate cost recovery to prevent the permanent loss of small hydro as a resource.

2. Pelzer and Aquenergy are Delaware companies domesticated by the South Carolina Secretary of State's Office to conduct business in South Carolina. Pelzer currently owns and operates hydropower facilities located in Pelzer, SC, and Williamston, SC. Aquenergy currently owns and operates hydropower facilities located in Piedmont, SC, and Ware Shoals, SC. Pelzer

and Aquenergy maintain offices and employ staff located with their South Carolina hydropower facilities, but also have a management office located in Manchester, New Hampshire.

3. Northbrook is a Delaware corporation domesticated by the South Carolina Secretary of State's Office to conduct business in South Carolina. Northbrook operates hydropower facilities located in Geenvile, SC, Ware Shoals, SC, and Honea Path, SC. Northbrook maintains offices and employs staff located at their South Carolina hydropower facilities.

4. On or about May 26, 2021, each of the Hydropower Petitioners received e-mail notice (the "Notice," Exhibit A hereto) from Duke Energy Carolinas, LLC ("DEC") and Duke Energy Progress, LLC ("DEP") that the Commission had opened the above-captioned dockets relating to DEC and DEP in accordance with the provisions of the South Carolina Energy Freedom Act, codified at S.C. Code Ann. § 58-41-10 *et seq.* (the "Act").

5. Under the Act, the Commission, at least once every twenty-four months, reviews and approves each electrical utility's "standard offer, avoided cost methodologies, form contract power purchase agreements, commitment to sell forms, and any other terms or conditions necessary to implement the terms of [the Act]." *See* S.C. Code Ann. § 58-41-20(A).

6. Consistent with the Act, the Notice further reiterated and confirmed that approval of avoided cost rates, tariffs, power purchase agreement ("PPA") forms, and terms and conditions for qualifying facilities ("QF"), among other matters, are all at issue in the above-captioned docket proceedings.

7. The Hydropower Petitioners, all operating QFs subject to the rates, tariffs, and PPAs at issue in these proceedings, each have a substantial and specific economic interest in the development and operation of clean, reliable hydropower in South Carolina and, thus, in the Commission's consideration of the matters under the Act.

8. In particular, the Hydropower Petitioners have an immediate interest in making certain that the Commission “account[s] for differences in costs avoided based on the geographic location and resource type of a small power producer's qualifying small power production facility” when making findings or issuing any approvals. S.C. Code Ann. § 58-41-20(B)(3).

9. The Hydropower Petitioners all have energy projects located and operating in South Carolina. The Hydropower Petitioners have qualifying facilities positioned in DEC’s and/or DEP’s systems that will be impacted by the decisions this Commission makes regarding the selection of an avoided cost methodology, calculation of the avoided cost, the term of length in years that the utility must offer for power purchase agreements to qualifying facilities, and the other terms and conditions this Commission finds necessary to adjudicate pursuant to the Act. All of these issues squarely impact the economics and feasibility of the Hydropower Petitioners projects.

10. In sum, if the Commission adopts the recommendations as currently put forward by DEC and DEP without any further action relative to hydroelectric facilities, the Hydropower Petitioners will not be able to operate their facilities at a break-even point, let alone at a profit. Such a result will make small hydro unsustainable and result in its eventual loss in this state.

11. The Hydropower Petitioners are not seeking a wholesale reevaluation of DEC’s and DEP’s avoided cost methodologies. Rather, consistent with longstanding historical utility practice, the Hydropower Petitioners’ seek a reinstitution of utility terms and power adjustments which, with some success, accounted for the unique costs of maintaining the reliability and capacity benefits of hydropower. Without explanation or Commission approval, DEC ceased the practice of adjusting avoided costs which accounted for those unique hydropower attributes. As a result of that action, the Hydropower Petitioners’ facilities, which employ dozens of local residents and

provide clean, reliable, carbon-free power for thousands more in this state, are now operating at a substantial loss and in jeopardy of not surviving.

12. Accordingly, the Hydropower Petitioners have a direct, substantial, and immediate interest in the outcome of this proceeding, as their business interests are being and will be directly affected by the presentation and resolution of the matters at issue under the Act in these proceedings. Plainly stated, the Hydropower Petitioners' ability to operate at all relates directly to the details and outcome of these proceedings.

13. For those reasons, among others, the Hydropower Petitioners' interests in this proceeding cannot be adequately represented or protected by any other party.

14. The Commission has established a procedural schedule for this proceeding. As indicated in the Notice of DEC and DEP, the opportunity to intervene and present testimony has not passed. Accordingly, the Hydropower Petitioners' petition and written testimony, served and filed contemporaneously herewith, are both timely. Moreover, with the hearing scheduled to begin almost two months from now, there is time and opportunity for the Hydropower Petitioners to participate and for others to respond if necessary.

15. The Hydropower Petitioners' participation would constructively add to this proceeding by contributing to the development of a complete record based on their unique, significant interests in operating and maintaining hydropower projects, which offer clean, highly reliable, and carbon-free energy for South Carolina customers.

16. Granting the Hydropower Petitioners' request to intervene in this proceeding is in the public interest and is consistent with the policies of the Commission in encouraging maximum public participation in issues before it.

17. Pursuant to Rule 103-804, the Hydropower Petitioners state that they are represented by the following counsel in this proceeding:

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WHEREFORE, Petitioners Pelzer Hydro Company, LLC, Aquenergy Systems, LLC, and Northbrook Carolina Hydro, LLC pray that they be allowed to intervene as parties of record and participate fully in this proceeding.

Respectfully submitted this 10<sup>th</sup> day of June, 2021.

NELSON MULLINS RILEY & SCARBOROUGH LLP

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**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day one copy of the **Petition to Intervene of Pelzer Hydro Company, LLC, Aquenergy Systems, LLC, and Northbrook Carolina Hydro, LLC** to the persons named below at the addresses set forth via electronic mail and e-filing:

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Columbia, South Carolina  
June 10, 2021